

ESTATE OF WILLIS ATTOCKNIE

IBIA 81-32

Decided April 8, 1982

Appeal from order issued following rehearing by Administrative Law Judge Daniel S. Boos affirming prior determination of heirs in probate of intestate Indian trust estate.

Affirmed.

1. Indian Probate: Children, Illegitimate: Right to Inherit: Acts of Congress Controlling--Indian Probate: State Law: Applicability to Indian Probate, Intestate Estates

The right of an illegitimate daughter to inherit from the trust estate of her Indian father is controlled by the provisions of 25 U.S.C. § 371 (1976) notwithstanding the inconsistent provisions of any state statute. Under 25 U.S.C. § 371 the illegitimate daughter of an Indian beneficiary of trust lands is entitled to share in his estate in the same manner as his legitimate children.

2. Indian Probate: Evidence: Insufficiency of

Where appellant children sought to overturn finding that appellee was a daughter of decedent, which finding was based in part upon a birth certificate showing decedent to be appellee's father and upon testimony of a relative of the mother concerning the circumstances of appellee's

birth, the offered testimony of another man that he instead could possibly have been the father, which was vague and uncorroborated by other evidence, was insufficient to support reversal of prior findings concerning heirship.

APPEARANCES: Robert T. Keel, Esq., for appellants Roberta Attocknie, Franchon Willene Attocknie Douglas, Jesse Attocknie, Willis Attocknie, Jr., and Alvie Allen Attocknie.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On October 22, 1978, Willis Attocknie died intestate leaving a surviving wife and four legitimate children, appellants here. On March 18, 1980, the Administrative Law Judge conducting the probate administration of decedent's estate found appellee Wanda Mae Medrana to be the illegitimate daughter of decedent entitled to share in his trust estate. Applying the Oklahoma law of evidence pursuant to 43 CFR 4.232(a) the Administrative Law Judge admitted a birth certificate dated as received at the Kiowa agency on March 1, 1937, showing appellee to be the daughter born on February 24, 1937, of Anna Ahboah and decedent. He also took official notice of the transcript of hearing in the probate of the Indian trust estate of Anna Ahboah, which contains testimony of Anna Ahboah's sister to the effect that decedent was appellee's father.

Appellants sought a rehearing on the question of appellee's paternity, which was held on November 6, 1980. On January 7, 1981, an order issued, affirming the prior determination concerning appellee's paternity.

At the rehearing, appellants offered testimony by Howard Neconie who testified that he might have been the father of appellee based upon circumstances he ascribed to the summer of 1936. However, Neconie testified, "I wouldn't say for sure whether I'm the father or not" (Tr. 7). The direct testimony of Neconie was contradicted by evidence offered by Mildred Ahboah who testified decedent and Anna Ahboah lived together in the same house in the summer of 1936 and thus Anna became pregnant following that cohabitation. According to Mildred Ahboah, the circumstances described by Howard Neconie to have existed in the Ahboah household in 1936 did not occur until much later. Her testimony was supported by the testimony of Alfred Pohlemann who testified that he lived in the house with Anna Ahboah and decedent in 1936 and that decedent and Anna Ahboah lived together in the same room. He also testified that Howard Neconie had earlier denied the truth of the recorded testimony he gave concerning appellee's paternity. Additionally, evidence was offered at the rehearing by appellee and Pohlemann that decedent had orally acknowledged his paternity of appellee.

Finding the testimony of Howard Neconie to be "inconclusive," the Administrative Law Judge held the appellants had failed to offer sufficient proof to support a reversal of his initial findings concerning heirship.

On appeal, decedent's surviving wife and children argue, first, that an illegitimate cannot inherit under Oklahoma law absent compliance with certain statutory proofs, regardless of whether she is, in fact, the natural daughter of decedent and, second, that the Administrative Law Judge failed to make findings sufficient to support his conclusion on rehearing that appellee

is the natural child of decedent, and therefore entitled to share in his estate.

[1] Appellants' first contention is wrong as a matter of law. Under the provisions of the Act of February 28, 1891, 26 Stat. 795, 25 U.S.C. § 371(1976),

Whenever any male and female Indian shall have cohabited together as husband and wife according to the custom and manner of Indian life the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child. [1/]

Since Federal, rather than state, law controls the probate of Indian trust estates, the Administrative Law Judge correctly found because appellee was proven to be the natural daughter of decedent, she was entitled to share in decedent's trust lands (Estate of Keahtigh, 9 IBIA 190 (1982); Estate of Green, 3 IBIA 110, 81 I.D. 556 (1974)).

[2] Appellants' second contention also fails. The Administrative Law Judge, basing his ruling upon the transcript of the hearings developed in this case, first found that appellee was shown by uncontradicted evidence

^{1/} The primary purpose of this statute is to provide for legitimation of the issue of Indian parents by finding an Indian custom marriage. See Attocknie, v. Udall, 261 F. Supp. 876, 883 (W.D. Okla. 1966), rev'd on other grounds, 390 F.2d 636 (10th Cir.), cert. denied, 393 U.S. 833 (1968). In addition, the statute declares illegitimate children to be the legitimate issue of their fathers. The statute is silent regarding the rights of illegitimates to inherit from or through their mothers. The settled administrative and judicial construction of this omission is that Congress intended to leave the matter of illegitimates' right to inherit from or through their mothers to the law of the state where the trust property is situated. See Eskra v. Morton, 524 F.2d 9, 18 (7th Cir. 1975); Solicitor's Opinion, 58 I.D. 149 (1942).

received at the initial hearings into the estate to be the natural daughter of decedent. Upon rehearing he found, following a recitation of relevant evidence, that appellants had failed to offer proof sufficient to overcome his initial finding concerning heirship. In making this finding, he rejected findings proposed by appellants which would have given full weight to the evidence offered by Howard Neconie, for the reason that Neconie's testimony was inconclusive. A review of the entire transcript supports his finding in this regard. Neconie's evidence is vague. Even without considering the attack upon his credibility by witness Pohlemann, the nature of the testimony given by Neconie is such that it is properly characterized by the finder of fact below. The evidence offered at rehearing is insufficient to require reversal of the order determining inheritance dated March 18, 1980.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order appealed from dated March 18, 1980, is affirmed.

This decision is final for the Department.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Jerry Muskrat
Administrative Judge